



State of Washington  
REPORT OF EXAMINATION  
FOR WATER RIGHT CHANGE

File NR: CS4-01210CTCL  
WR Doc ID: 4715661

Changed Point of Diversion

PRIORITY DATE  
June 30, 1871

WATER RIGHT NUMBER  
Ecology Control No.: CS4-01210CTCL  
Certificate No.: S4-84622-J

MAILING ADDRESS  
David Brown  
c/o New Schanno Ditch Company  
City of Yakima  
2301 Fruitvale Blvd.  
Yakima, WA 98902

SITE ADDRESS (IF DIFFERENT)  
N/A

Total Quantity Authorized for Diversion

DIVERSION RATE  
14.98\*

UNITS  
cfs

ANNUAL QUANTITY (AC-FT/YR)  
5,163\*

\*See "Remarks" below.

Purpose

PURPOSE	DIVERSION RATE			ANNUAL QUANTITY (AC-FT/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON- ADDITIVE	UNITS	ADDITIVE	NON-ADDITIVE	
Irrigation of residential, commercial, and agricultural lands	14.98		cfs	5,163*		04/01 - 08/31
Irrigation of residential, commercial, and agricultural lands		10.0	cfs		5,163*	09/01 - 09/30
Irrigation of residential, commercial, and agricultural lands		7.5	cfs		5,163*	10/01 - 10/31

REMARKS:

The quantities authorized by the Court for diversion at the Naches River by New Schanno Ditch Company (New Schanno) depend on the availability of return flow water from the West Side Drain. In the event return flow from the West Side Drain is unavailable, New Schanno may divert additional quantities from the Naches River.

The Draft Schedule of Rights, *Acquavella* Surface Water Rights Adjudication, specifies the following diversion schedule:

New Schanno is authorized to divert from the Naches River into the Fruitvale Canal 3,149 acre-feet for irrigation of 194.3 acres within the Upper and Western portions of the New Schanno. The following schedule of delivery shall apply: 9.38 cubic feet per second (cfs) April through August; 6.25 cfs in September; 4.69 cfs in October.

New Schanno is authorized to divert from the Fruitvale Canal via the pumps located at 3rd Avenue and Peach, and 10th Avenue and Willow, 1,939 acre-feet for irrigation of 194.3 acres within the Upper and Western portions of the New Schanno. The following schedule of diversion shall apply: 6.0 cfs April through August; 4.0 cfs in September; 3.0 cfs in October.

In the event that the primary supply of water from the West Side Drain is not available to shareholders in the Eastern and Lower New Schanno, then New Schanno shall be allowed to exercise its standby and reserve right. New Schanno may divert these additional quantities:

At the Naches River: 5.6 cfs April through August; 3.75 cfs in September; and 2.81 cfs in October; and 2,014 acre-feet.

At New Schanno (16th/Cherry): 3.6 cfs April through August; 2.4 cfs in September; 1.8 cfs in October; and 1,289 acre-feet.

IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION	
ADDITIVE	NON-ADDITIVE	WATER SYSTEM ID	CONNECTIONS
388.6		N/A	N/A

Source Location			
COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
YAKIMA	NACHES RIVER	YAKIMA RIVER	38-NACHES

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
NACHES RIVER	181309-24002	N/A	13 N.	18 E.	09	SE NW	N/A	N/A

#### Place of Use (See Attached Map)

##### LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

A narrative description of the place of use (POU) is given in the Draft Schedule of Rights for the *Acquavella* Surface Water Rights Adjudication:

The POU is described in NS 19 and identified on COY 15F-1 (Upper New Schanno), COY 15I-1 (Western New Schanno), COY 15K-1 (Eastern New Schanno), COY 15N-1 (Lower New Schanno) and COY 15C-1.



This POU description includes:

- SW¼ of Section 13.
- E½ NE¼ of Section 25.
- E½ SE¼ of Section 25.

All in T. 13 N., R. 18 E.W.M.

AND

- NW¼ NW¼ of Section 30.
- S½ of Section 30.
- SE¼ NE¼ of Section 30.
- NW¼ NE¼ of Section 31.
- E½ NE¼ of Section 31.
- SE¼ SE¼ of Section 31.
- SE¼ NW¼ of Section 29.
- SW¼ of Section 29.
- W½ SE¼ of Section 29.
- NW¼ of Section 32.
- W½ NE¼ of Section 32.
- SW¼ of Section 32.
- W½ SE¼ of Section 32.
- SE¼ SE¼ of Section 32.

All in T. 13 N., R. 19 E.W.M.

AND

- NW¼ NE¼ of Section 06.
- E½ NE¼ of Section 06.
- E½ SE¼ of Section 06.
- W½ NW¼ of Section 05.
- W½ SW¼ of Section 05.

All in T. 12 N., R. 19 E.W.M.

#### Proposed Works

This application seeks to change a portion of the adjudicated Court Claim S4-01210CTCL from its existing diversion on the Naches River below Twin Bridges (at river mile 3.0), to the site of Nelson-Cowiche Dam upstream on the Naches River at river mile 3.7. The proposed move is a component in the consolidation of irrigation water diversions managed by the City of Yakima (City) at the site of the proposed renovated dam structure. The City is proposing to move the point of diversion (POD) concurrent with reconstruction of the dam, which is intended to relieve stresses driven by problematic river aggradation.

Development Schedule		
BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Begun	July 31, 2025	July 31, 2030

Washington State Department of Ecology's (Ecology) findings as documented by this water right change decision are based on the Schedule of Water Rights presented in the Conditional Final Order (CFO), Major Claimants, issued April 10, 2003 by the Yakima County Superior Court (Court), and the current *Acquavella* Draft Schedule of Rights, which is periodically updated when changes are made by the Court. Ecology's decision is subject to any subsequent determination made by the Court, including the Final Decree in *Department of Ecology v. Acquavella*. Any changes to this water right made by the Court will be reflected on the final certificate of adjudicated water right, which will issue subsequent to entry of the Final Decree in *Department of Ecology v. Acquavella*.

Measurement of Water Use	
How often must water use be measured?	Weekly
How often must water use data be reported to Ecology?	Annually (Jan 31)
What volume should be reported?	Total Annual Volume
What rate should be reported?	Annual Peak Rate of Diversion (cfs)

## Provisions

### Department of Fish and Wildlife Requirement(s)

The intake(s) must be screened in accordance with Department of Fish and Wildlife screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). If you have questions about screening criteria, contact the Department of Fish and Wildlife at:

Department of Fish and Wildlife  
Attention: Habitat Program  
600 Capitol Way N  
Olympia, WA 98501-1091

Phone: (360) 902-2534  
Email: [habitatprogram@dfw.wa.gov](mailto:habitatprogram@dfw.wa.gov)  
Website: <http://wdfw.wa.gov/conservation/habitat/planning/screening/>

For the Yakima Construction Shop, to obtain technical assistance for your project (509) 575-2104.

### Easement and Right-of-Way

Where the water source and/or water transmission facilities are not wholly located upon land owned by the applicant, issuance of a water right change authorization by this department does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtaining such a right is a private matter between applicant and owner of that land.

### Schedule and Inspections

Ecology personnel, upon presentation of proper credentials, will have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices, and associated distribution systems for compliance with water law.



### Findings of Facts

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Application No. CS4-01210CTCL, subject to existing rights and the provisions specified above.

### Your Right To Appeal

This Decision may be appealed pursuant to RCW 34.05.514(3), RCW 90.03.210(2), and Pretrial Order No. 12 entered in *State of Washington, Department of Ecology v. James Acquavella, et al.*, Yakima County Superior Court No. 77-2-01484-5 (the general adjudication of surface water rights in the Yakima River Basin). The person to whom this Decision is issued, if he or she wishes to file an appeal, must file the notice of appeal with the Yakima County Superior Court **within thirty (30) days of receipt of this Decision**. Appeals must be filed with the Superior Court Clerk's Office, Yakima County Superior Court, 128 North 2<sup>nd</sup> Street, Yakima WA 98901, RE: Yakima River Adjudication. Appeals must be served in accordance with Pretrial Order No. 12, Section III ("Appeals Procedures"). The content of the notice of appeal must conform to RCW 34.05.546. Specifically, the notice of appeal must include:

- The name and mailing address of the appellant;
- Name and address of the appellant's attorney, if any;
- The name and address of the Department of Ecology;
- The specific application number of the decision being appealed;
- A copy of the decision;
- A brief explanation of Ecology's decision;
- Identification of persons who were parties in any adjudicative proceedings that led to Ecology's decision;
- Facts that demonstrate the appellant is entitled to obtain judicial review;
- The appellant's reasons for believing that relief should be granted; and
- A request for relief, specifying the type and extent of relief requested.

The "parties of record" who must be served with copies of the notice of appeal under RCW 34.05.542(3) are limited to the applicant of the decision subject to appeal, Ecology and the Office of the Attorney General.

All others receiving notice of this Decision, who wish to file an appeal, must file the appeal with the Yakima County Superior Court **within thirty (30) days of the date the Order was mailed**. The appeal must be filed in the same manner as described above.

**Please send a copy of your appeal to:**

Section Manager  
Water Resources Program  
Ecology Central Regional Office  
1250 West Alder Street  
Union Gap, WA 98903

Signed at Union Gap, Washington, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Thomas Perkow, Acting Section Manager  
Water Resources Program  
Central Regional Office

DRAFT

To find laws and agency rules visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser>.



## INVESTIGATOR'S REPORT

### BACKGROUND

#### Description and Purpose of Requested Change

On January 21, 2011, the City of Yakima (the City), on behalf of the New Schanno Ditch Company (New Schanno), filed this change application to make an upstream move of the existing diversion on the Naches River below Twin Bridges (at river-mile 3.0), to the site of Nelson-Cowiche Dam upstream on the Naches River at river-mile 3.7. Water diverted at the proposed point of diversion (POD) will be conveyed down the City's general irrigation pipe and into the Fruitvale Canal near the intersection of Naches Heights Road and West Powerhouse Road. The proposed move is a component in the consolidation of irrigation water diversions managed by the City at the site of the proposed replacement dam structure. The City is proposing to move the POD concurrent with reconstruction of the dam, which also serves to relieve stresses driven by problematic river aggradation and subsequent flood control difficulties on the Naches River. For the City's irrigation department, moving the POD will also eliminate a complicated start-up process at the beginning of each irrigation season.

No other attribute changes are proposed as part of this change application. The irrigation and ditch companies represented by the City will continue to be supplied irrigation water from the Naches River. If this application is approved (along with the four other companion applications), it will consolidate the PODs for each of the separately-defined water rights to a single POD at the Nelson-Cowiche Dam.

This change application qualifies for expedited processing under WAC 173-152-050(2)(d) whereby water right changes or transfers may be priority processed when the proposed water use would result in providing public water supplies to meet general public needs for the regional area. The requested water right change is a component in the larger Nelson-Cowiche Dam project, whose goals include enhancing and improving water management, flood control, wetlands, fish habitat, and the reliability of water supply for existing Yakima Basin water rights.

This investigation serves as the written findings of fact concerning water right Change Application CS4-01210CTCL.

**Table 1: Attributes of Application for Change CS4-01210CTCL.**

Attributes	Existing	Proposed
<b>Name</b>	New Schanno Ditch Co.	New Schanno Ditch Co.
<b>Priority Date/Change Application Date</b>	June 30, 1871	January 21, 2011
<b>Instantaneous Quantity (Qi)</b>	With the West Side Drain water available: 9.38 cfs April 1 – August 31, 6.25 cfs September 1 – 30, 4.69 cfs October 1 – 31.	With the West Side Drain water available: 9.38 cfs April 1 – August 31, 6.25 cfs September 1 – 30, 4.69 cfs October 1 – 31.  Without West Side Drain water available:

	Without the West Side Drain water available: 14.98 cfs April 1 – August 31, 10.0 cfs September 1 – 30, 7.5 cfs October 1 – 31.	14.98 cfs April 1 – August 31, 10.0 cfs September 1 – 30, 7.5 cfs October 1 – 31.
<b>Annual Quantity (Qa)</b>	3,149 acre-feet per year with the West Side Drain water; 5,163 acre-feet per year without the West Side Drain water.	3,149 acre-feet per year with the West Side Drain water; 5,163 acre-feet per year without the West Side Drain water.
<b>Purpose of Use</b>	Irrigation of residential, commercial, and agricultural lands.	Irrigation of residential, commercial, and agricultural lands.
<b>Period of Use</b>	April 1 – October 31	April 1 – October 31
<b>Place of Use</b>	Place of use is described in NS 19 and identified on COY 15F-1 (Upper New Schanno), COY 15I-1 (Western New Schanno), COY 15K-1 (Eastern New Schanno), COY 15N-1 (Lower New Schanno) and COY 15C-1.	Place of use is described in NS 19 and identified on COY 15F-1 (Upper New Schanno), COY 15I-1 (Western New Schanno), COY 15K-1 (Eastern New Schanno), COY 15N-1 (Lower New Schanno) and COY 15C-1.
<b>Point of Diversion</b>	2,500 feet north and 100 feet west of the southeast corner of Section 9, being within the NE¼SE¼ of Section 9, T. 13 N., R. 18 E.W.M., Yakima County.	1,790 feet south and 1,600 feet east of the northwest corner of Section 9, being within the SE¼NW¼ of Section 9, T. 13 N., R. 18 E.W.M., Yakima County.

### Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing the proposed change.

- **Public Notice**

RCW 90.03.280 requires that notice of a water right application be published once per week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted, and used.

Notice of this application was published in the Yakima Herald Republic on July 13, and July 20, 2012. No letters of protest or comments were received during the 30-day protest period.

- **Water Transfer Working Group**

This application was presented to the Yakima River Basin Water Transfer Working Group (WTWG) on November 2, 2015. Both the Yakama Nation and the Washington Department of Fish and Wildlife (WDFW) requested further analysis on potential changes to the hydrograph resulting from the upstream move in POD. This component was presented and discussed at the December 7, 2015 WTWG meeting. A representative from WDFW verbally indicated that they had no further concerns after reviewing the presented data. On December 10, 2015, the



Washington Department of Ecology (Ecology) received notification from the Yakama Nation stating that they had no further concerns with the project.

- **State Environmental Policy Act (SEPA)**

A water right application is subject to a SEPA threshold determination (i.e. an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions is met:

- (a) It is a surface water right for more than 1 cubic foot per second (cfs), unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cfs, so long as that irrigation project will not receive public subsidies.
- (b) It is a groundwater right for more than 2,250 gallons per minute (gpm).
- (c) It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts in (a) and (b) above.
- (d) It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA).
- (e) It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

On November 14, 2014, the City, SEPA Lead Agency for the project, determined that this project will have no probable significant adverse impact on the environment and issued a Determination of Nonsignificance (DNS) on December 1, 2014 under SEPA File No. 026-14. The DNS and entire official SEPA file for this project are available from the City of Yakima Community Development Department in Yakima, WA, at (509) 575-6183; or a copy of the DNS is available by contacting Ecology's Central Regional Office in Union Gap, WA, at (509) 575-2490.

- **Water Resources Statutes and Case Law**

RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed. The POD, POU, and purpose of use may be changed if it would not result in harm or injury to other water rights.

WAC 173-152-050(2)(d) states that Ecology may approve an application for priority processing that, if approved, would result in providing for public water supplies including, but not limited to, consolidation of two or more public water systems, to meet general public needs for the regional areas.

#### **Tentative Determination of Extent and Validity**

The Washington Supreme Court has held that Ecology, when processing an application for change to a water right, is required to make a tentative determination of extent and validity of the claim or right (See *RD Merrill v. PCHB* and *Okanogan Wilderness League v. Town of Twisp*). This is necessary to

establish whether the claim or right is eligible for change. In this case, the proposed right for change has been adjudicated by the Yakima Superior Court and a Conditional Final Order (CFO) for the New Schanno Ditch Company Court Claim No. 1210 issued on April 10<sup>th</sup>, 2003. As there has been at least a 5-year period since the issuance of the CFO, a tentative determination of the extent and validity of this right is required.

## INVESTIGATION

Data and information used to construct this investigation were obtained during a site visit conducted on July 8, 2014. Present during the site visit were Ecology representatives Tyler Roberts and Stan Isley, and applicant representative Dave Brown of the City. Other pertinent information was obtained from various sources internal and external to Ecology. These sources include, but are not limited to:

- Documentation submitted with the change application
- Applicable RCW and WAC chapters
- Ecology records
- Historical land and aerial photographs
- Data submitted by the applicant concerning the historical quantity of diverted water
- Water Resources Program Geographic Information System (GIS) data
- In-person meetings, discussions, and presentations with involved personnel from the City, WDFW, U.S. Bureau of Reclamation (USBR), and Yakima County Flood Control Zone District (Flood Control)
- Court documentation such as the CFO and Report of Referee (RoR)

### History of Water Use for Court Claim No. 1210

Court Claim No. 1210 was filed in *Department of Ecology v. James J. Acquavella, et al. (Acquavella)* by the New Schanno Ditch Company (New Schanno). New Schanno claimed water for 500 to 550 acres of irrigation from the Naches River, testifying that construction of the canal began in 1873 with incorporation of the company prior to 1903. New Schanno based their claimed rights on the appropriation of water by Charles and Joseph Schanno.

A key element of the New Schanno right is the shared POD and conveyance ditch with other nearby ditch companies, now commonly referred to as Fruitvale Canal and managed by the City. This is conditioned by a 1903 agreement between New Schanno and the Yakima Water, Light and Power Company (Power Company) to share use of Fruitvale Canal with the Power Company, Broadgauge Ditch Company, Fruitvale-Schanno Ditch Company, and the R.S.&C. Ditch Company. This agreement gave the Power Company the right to use the water for power generation before delivery to New Schanno. The agreement furthermore stipulated that New Schanno was entitled up to 41 cfs during the irrigation season, and up to 41 cfs for stock, domestic, ice making, or any other purpose during non-irrigation season.

New Schanno and the USBR entered into an agreement in 1906 that limited New Schanno's diversion from the Naches River to 15 cfs from April 1 to August 31, 10 cfs during September, and 7.5 cfs in October. The 15 cfs quantity outlined in this agreement would later be filed pursuant to Chapter 90.14 RCW in Water Right Claim No. 095316 on April 23, 1974. This claim was filed by New Schanno claiming



15 cfs, 2,400 ac-ft/yr for 600 acres of irrigation during March 15 through October 31.

#### West Side Drain

Both instantaneous and annual quantities authorized by the Court depend on the presence of return flow entering New Schanno Ditch from the West Side Drain. Water from the West Side Drain is clean wastewater from industrial (fruit processing) facilities and—according to testimony in the RoR for Subbasin No. 19 (Lower Naches River)—originates with the City's municipal system and terminates, after use by the processing facilities, as return flow into New Schanno Ditch. When available, this return flow serves as a primary portion of the right.

Pages 129-130 of the RoR for Subbasin No. 19 describes this water as follows (quoted at length for clarity):

Water is diverted in the power canal [Fruitvale Canal] for use by the ditch companies at a point located in the NW¼SW¼ of Section 10, T. 13 N., R. 18 E.W.M. The Fruitvale-Schanno Irrigation Co. diverts its water from the canal about 1,300 feet south of the main diversion. At 28<sup>th</sup> and Lincoln in the City of Yakima, the City, which owns approximately one-half of the New Schanno shares, withdraws 12 cfs from the canal. The R. S. & C. Irrigation Company withdraws its water from the canal at the location of the old powerhouse, near 20<sup>th</sup> Avenue and Lincoln, with the remaining water in the canal used by the rest of the New Schanno shareholders and the Broadgauge Ditch Co. shareholders. According to calculations by Mr. Card [consulting engineer for the claimant], a maximum of 6.5 cfs is diverted from the power canal near 16<sup>th</sup> Avenue and Cherry Street into the ditch that is shared by New Schanno and Broadgauge. This quantity is based on an analysis of the headgate and the high water marks on the ditch, which are indicative of the maximum amount of water that has been carried through the system, but is not reflective of current usage. At Third Avenue and Peach Street, the city reportedly withdraws an additional 3 cfs and the Broadgauge Ditch Company withdraws the remaining water into its own ditch, leaving the canal basically dry at this point. There has been neither measurement of the flow in the canal nor testimony regarding the capacity or size of the pumps utilized by the city.

A few hundred feet further down the canal, water from the Westside Drain is discharged into the New Schanno Ditch. This is wastewater from fruit processing plants located within the city limits that reportedly receive their process water from the city's municipal water system. This wastewater is used exclusively by the New Schanno shareholders, except the city of Yakima, and these shareholders lie east of South First Street, between Mead Avenue and East Arlington Street, plus four shareholders in Union Gap.

#### Transfer to Major Claimant Pathway

On October 14, 1993, the Court granted a motion to transfer the New Schanno claim into the Major Claimant Pathway from Sub-basin 19 (Lower Naches).

### Conditional Final Order

Germane to the current investigation is the *Acquavella* CFO. On April 10, 2003, the Court issued the CFO for Court Claim No. 1210 with the following provisions:

- 1) The point of diversion is located approximately 2,500 feet north and 100 feet west of the southeast corner of Section 9, being within the NE¼SE¼ of Section 9, T. 13 N., R. 18 E.W.M.
- 2) Priority date is June 30, 1871.
- 3) The purpose of use is irrigation of 388.6 acres of residential, commercial and agricultural land
- 4) The place of use is described in NS 19 and identified on COY 15F-1 (Upper New Schanno), COY 15I-1 (Western New Schanno), COY 15K-1 (Eastern New Schanno), COY 15N-1 (Lower New Schanno), and COY 15C-1.
- 5) The season of use is April 1 through October 31.
- 6) New Schanno is authorized to divert from the Naches River according to the following schedule:

From the Naches River when water from the West Side Drain is available:

- 9.38 cubic-feet per second from April 1 through August 31
- 6.25 cubic-feet per second from September 1 through September 30
- 4.69 cubic-feet per second from October 1 through October 31
- 3,149 ac-ft/yr

When water from the West Side Drain is not available, the court authorizes New Schanno to divert additional quantities up to the *total* volume of diversion given as follows:

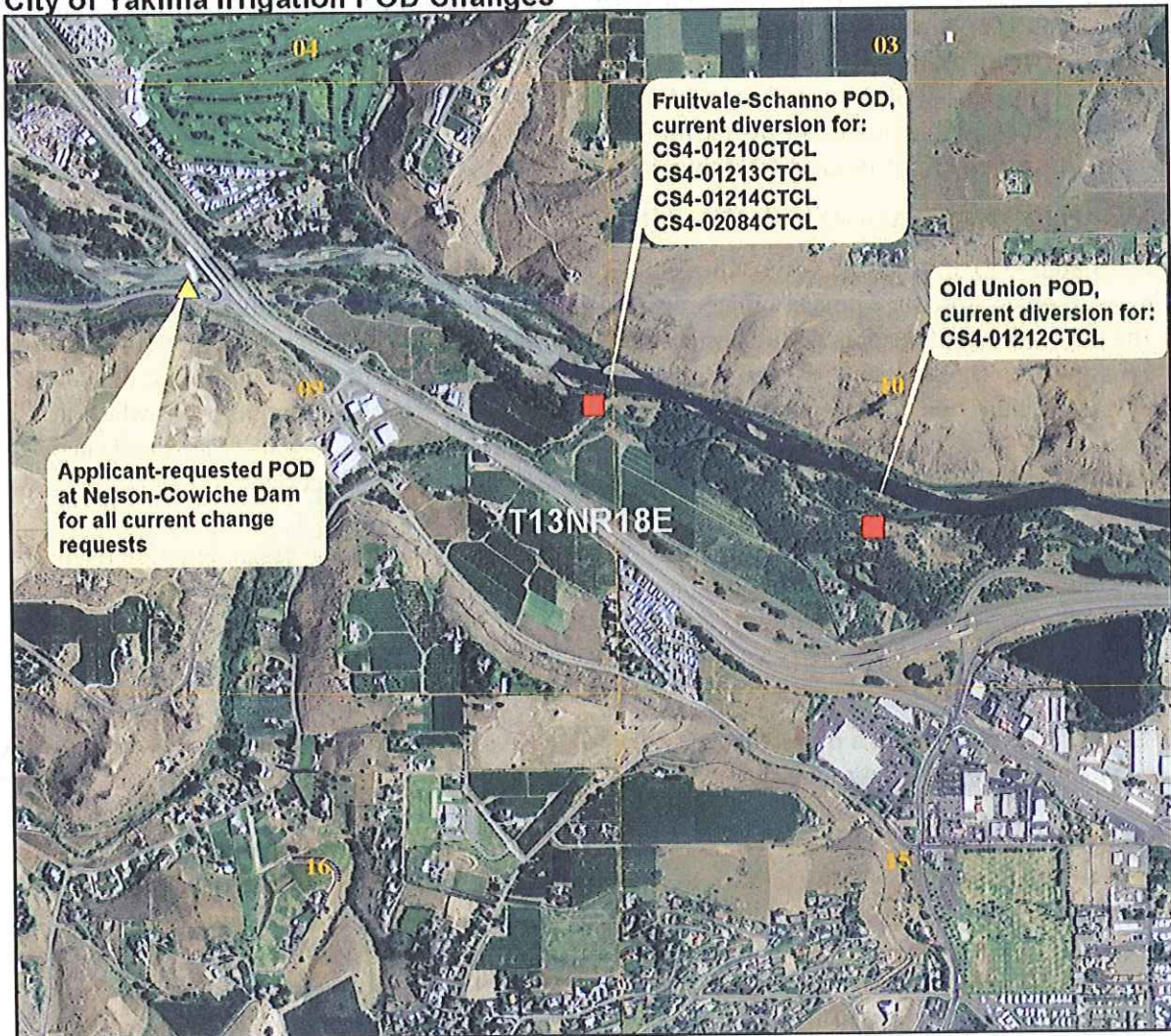
- 14.98 cubic-feet per second from April 1 through August 31
- 10.0 cubic-feet per second from September 1 through September 30
- 7.5 cubic-feet per second from October 1 through October 31
- 5,163 ac-ft/yr

The Court also found the following:

- 7) New Schanno's claim to an unauthorized or *defacto* change in point of diversion is denied.
- 8) New Schanno's claim to a standby or a reserve supply from the Glead Plant for the unissued shares is denied.
- 9) New Schanno's claim to a municipal supply is denied.
- 10) New Schanno's water right pursuant to the unassigned shares is relinquished for failure to put water to beneficial use or supply a sufficient cause for nonuse.



## City of Yakima Irrigation POD Changes






### Legend



Map Date: 10/26/2015



-  Applicant-requested Surface Diversion
-  CFO-authorized Surface Diversion
-  Sections

### Tentative Determination of Extent and Validity

An analysis of the tentative extent and validity for this right was performed using two methods:

- 1) **Aerial Photography.** Aerial photographs from 2003 to 2011 were obtained from Water Resources' GIS. These aerial photographs were reviewed to assess the irrigated areas after 2003 per RCW 90.14.160. Based on aerial photographs taken during 2005, 2006, 2009, and 2011, it appears the entire POU has been irrigated since 2003, supporting continuous beneficial use to the extent of the right specified by the Court in the Conditional Final Order.



- 2) **Flow Data.** Flow data for the Fruitvale Canal—the conveyance source for New Schanno (01210CTCL), Broadgauge/New Schanno (01213CTCL), Fruitvale-Schanno (01214CTCL), and RS&C/New Schanno (02084CTCL)—provided by the City and USBR support continuous beneficial use to the extent of the right specified by the Court in the 2003 CFO. These data provide monthly diversion quantities by maximum cubic feet per second, and annually by acre-feet per year, between April 1996 and October 2013. Flow data by month are listed in APPENDIX 2.

#### **Other Water Rights Appurtenant to the Place of Use**

The designated POU and historic use for the City's irrigation water right cover a large area, with the POU serving as a service area for a delivery system managed by the City. Historic beneficial use is spread over the lawns and gardens of residents inside the boundary of the POU. There are many other water rights that overlap the area served by the City of Yakima under CS4-01210CTCL. An analysis of Water Resources' GIS identified 91 water rights, claims to a water right, permits, and applications which at least partially overlap the POU of the subject right. Additionally, there are 48 water rights and claims to a water right with a groundwater point located within the POU for the subject right.

Ecology is unable to discern at this scale which of these overlapping rights use water separate from the City distribution system. However, the City manages distribution of irrigation water within the POU for this right such that the additive quantities are not exceeded.

#### **Impairment Considerations**

RCW 90.03.380 provides that a perfected water right may be changed in several ways, provided that the change will not impair the right of another water right holder.

The most significant issue in this application is the upstream diversion move on the Naches River. An upstream change results in an affected reach, defined by the section of the Naches River between the current POD location and the proposed POD location. The current POD is at the Fruitvale Canal diversion, located at approximately river-mile 3.0, and the proposed POD is at the site of the proposed Nelson-Cowiche Dam project at approximately river-mile 3.7, immediately west of the intersection of US 12 and the Naches River. The length of the affected reach is approximately 0.76 miles long. Any diversions located within this affected reach have the potential to be impaired or impacted by this proposal. However, there are no intervening surface water rights in the Naches River between the current POD and the proposed upstream POD on file with Ecology.

In general, upstream diversion moves have the potential to adversely affect fish habitat; the nature of this project allays this concern. The overall scope of this project is an inter-agency effort to both improve fish habitat and populations, and alleviate potentially destructive floodplain processes of the Naches River. Combining PODs for the five change applications by the City will allow the removal of several irrigation control apparatuses, which is expected to benefit anadromous and resident fish species and populations.

As a consequence, there are substantial environmental benefits to both the upstream move of the POD and the dam project. These benefits dispel the most common objections to upstream moves—problems stemming from removal of water for a reach of the river or stream—and alleviate ongoing flood plain (geomorphological) problems currently plaguing the river and the nearby affected communities of Gleeed and Naches.



On May 5, 2011, Ecology received a letter from USBR supporting the upstream move and supporting the City's five change applications.

### **Consideration of Protests and Comments**

There were no protests or comments filed in response to the public notice for this proposed application.

### **CONCLUSIONS AND RECOMMENDATIONS**

In accordance with Chapter 90.03 RCW, the author concludes that the water right confirmed under Court Claim No. 01210 with a priority date of June 30, 1871, is in good standing and is eligible for change. Approval of this change to change the POD will not cause impairment, nor will it enlarge the subject right.

Based on the above investigation and conclusions, the author recommends that the request for change be approved in the amounts and listed below and as provisioned in the Report of Examination above.

### **Authorized Quantities**

Authorized quantities are provisioned in the *Acquavella* Draft Schedule of Rights for Court Claim No. 1210, such:

From the Naches River when water from the West Side Drain is available:

- 9.38 cubic-feet per second from April 1 through August 31.
- 6.25 cubic-feet per second from September 1 through September 30.
- 4.69 cubic-feet per second from October 1 through October 31.
- 3,149 ac-ft/yr.

From the Naches River when water from the West Side Drain is not available:

- 14.98 cubic-feet per second from April 1 through August 31.
- 10.00 cubic-feet per second from September 1 through September 30.
- 7.50 cubic-feet per second from October 1 through October 31.
- 5,163 ac-ft/yr.

### **Purpose of Use**

Irrigation of 388.6 acres of residential, commercial, and agricultural land.

### **Point of Diversion**

Approximately 1,790 feet south and 1,600 feet east from the northwest corner of Section 9, being within the SE¼NW¼ of Section 9, T. 13 N., R. 18 E.W.M., Yakima County.

### **Place of Use**

A narrative description of the POU is given in the Draft Schedule of Rights for the *Acquavella* Surface Water Rights Adjudication:

"The place of use is described in NS 19 and identified on COY 15F-1 (Upper New Schanno), COY 15I-1 (Western New Schanno), COY 15K-1 (Eastern New Schanno), COY 15N-1 (Lower New Schanno) and COY 15C-1."

The POU for CS4-01210CTCL includes:

- T. 13 N., R. 18 E.W.M.:
  - SW¼ of Section 13.
  - E½ NE¼ of Section 25.
  - E½ SE¼ of Section 25.
- T. 13 N., R. 19 E.W.M.:
  - NW¼ NW¼ of Section 30.
  - S½ of Section 30.
  - SE¼ NE¼ of Section 30.
  - NW¼ NE¼ of Section 31.
  - E½ NE¼ of Section 31.
  - SE¼ SE¼ of Section 31.
  - SE¼ NW¼ of Section 29.
  - SW¼ of Section 29.
  - W½ SE¼ of Section 29.
  - NW¼ of Section 32.
  - W½ NE¼ of Section 32.
  - SW¼ of Section 32.
  - W½ SE¼ of Section 32.
  - SE¼ SE¼ of Section 32.
- T. 12 N., R. 19 E.W.M.:
  - NW¼ NE¼ of Section 06.
  - E½ NE¼ of Section 06.
  - E½ SE¼ of Section 06.
  - W½ NW¼ of Section 05.
  - W½ SW¼ of Section 05.

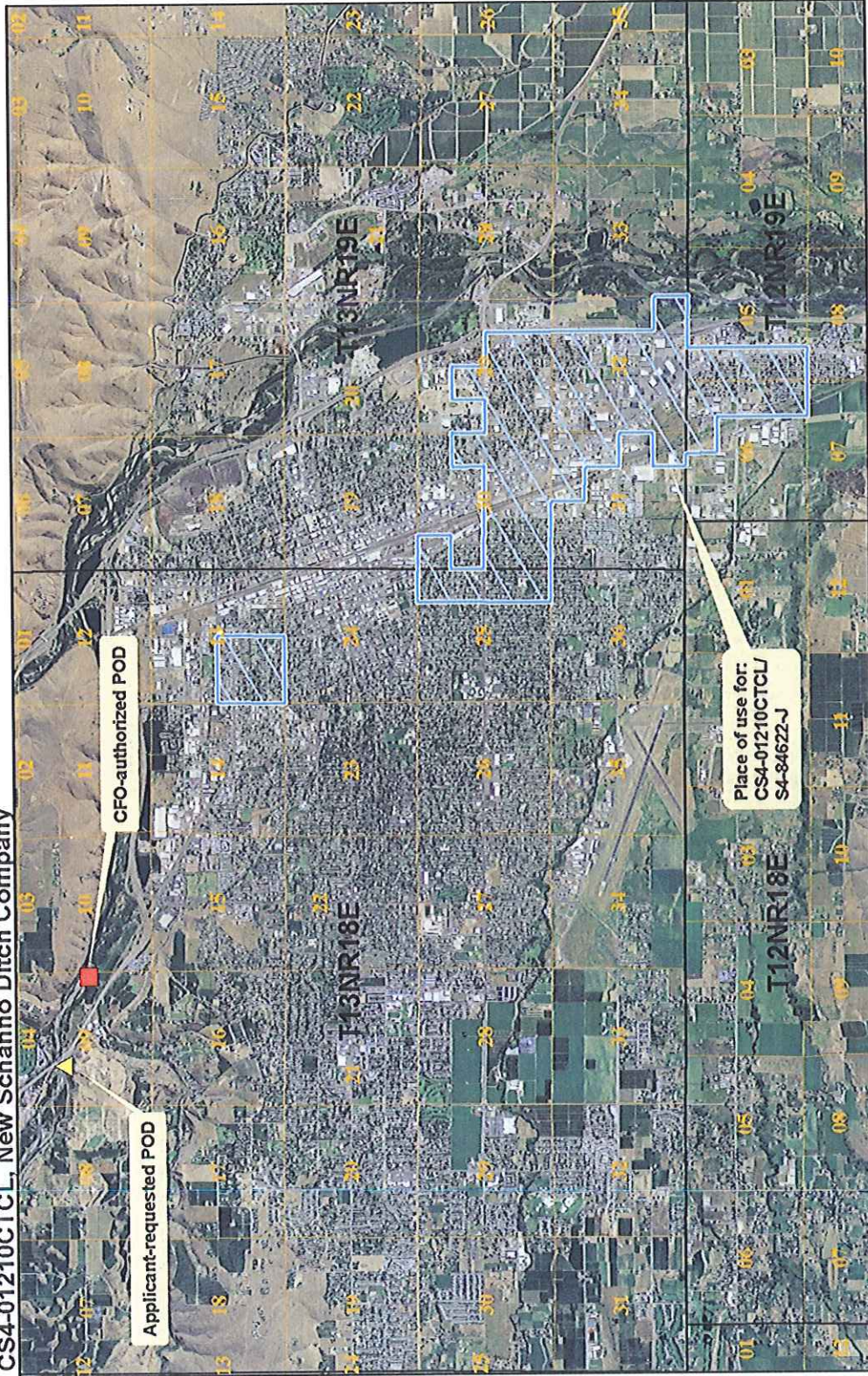
Report by: \_\_\_\_\_  
Tyler Roberts, Permit Writer

\_\_\_\_\_ Date

*If you need this document in a format for the visually impaired, call the Water Resources Program at (509)575-2490. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call (877) 833-6341.*

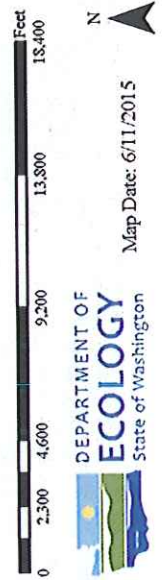


CS4-01210CTCL, New Schanno Ditch Company

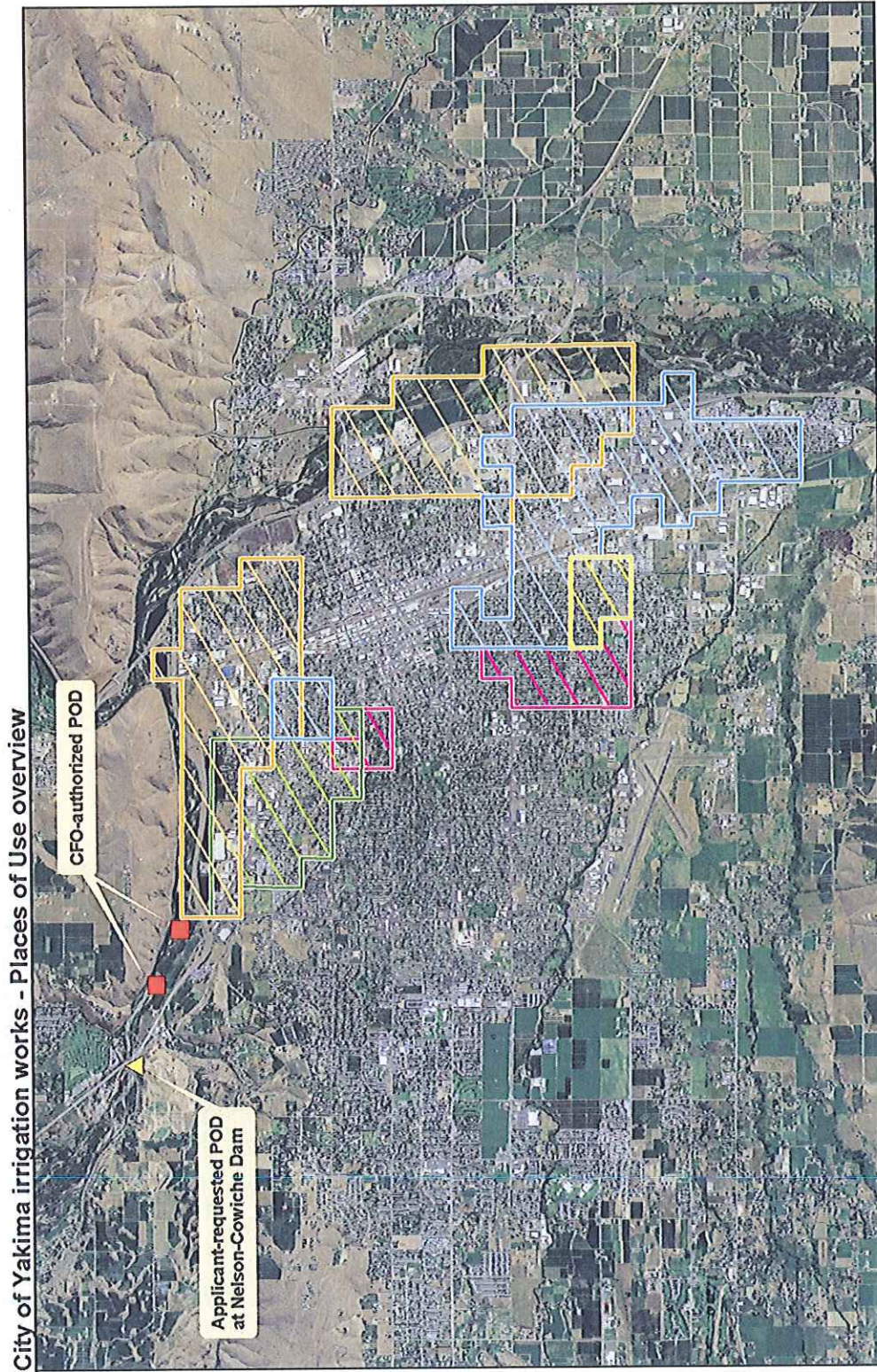


# Legend

- Place of use
- Applicant-requested Surface Diversion
- CFO-authorized Surface Diversion
- Townships
- Sections

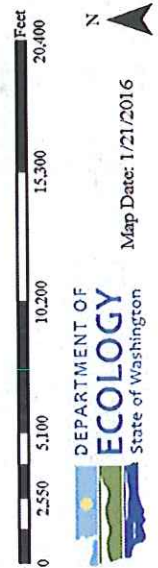






City of Yakima irrigation works - Places of Use overview

- Legend**
- CS4-01210CTCL Place of Use
  - CS4-01212CTCL Place of Use
  - CS4-01213CTCL Place of Use
  - CS4-01214CTCL Place of Use
  - CS4-02084CTCL Place of Use
  - Applicant-requested Surface Diversion
  - CFO-authorized Surface Diversion





APPENDIX 2  
MONTHLY FLOW DATA FOR FRUITVALE CANAL,  
DATA ARE COMBINED QUANTITIES FOR COURT CLAIM NOS. 1210, 1213, 1214, AND 2084

Fruitvale Canal Max monthly cfs WY ends in September of year listed below												
	O	N	D	J	F	M	A	M	J	J	A	S
1996	NA	NA	NA	NA	NA	NA	0.00	23.96	23.96	23.96	23.96	23.96
1997	19.97	0.00	0.00	0.00	0.00	0.00	29.29	31.95	27.67	23.06	23.06	23.06
1998	18.83	0.00	0.00	0.00	0.00	0.00	23.96	23.96	23.96	31.51	28.35	31.51
1999	23.96	0.00	0.00	0.00	0.00	0.00	32.15	28.35	23.96	32.32	23.96	23.96
2000	23.96	0.00	0.00	0.00	0.00	0.00	23.96	23.96	23.96	26.63	25.36	25.36
2001	20.75	0.00	0.00	0.00	0.00	0.00	28.73	23.96	23.96	27.67	22.59	22.59
2002	26.78	0.00	0.00	0.00	0.00	0.00	31.19	32.15	32.15	34.41	28.23	28.73
2003	21.30	0.00	0.00	0.00	0.00	0.00	28.23	25.14	28.35	28.35	32.27	25.20
2004	18.90	0.00	0.00	0.00	0.00	0.00	32.00	32.00	35.00	30.00	30.00	32.00
2005	21.55	0.00	0.00	0.00	0.00	0.00	33.40	31.19	31.19	18.75	31.99	31.19
2006	23.96	0.00	0.00	0.00	0.00	0.00	37.82	35.61	35.61	35.61	24.57	35.61
2007	28.99	0.00	0.00	0.00	0.00	0.00	33.40	33.40	33.40	26.78	24.57	26.78
2008	22.37	0.00	0.00	0.00	0.00	0.00	42.23	35.61	35.61	35.61	28.99	28.99
2009	24.57	0.00	0.00	0.00	0.00	0.00	28.99	33.40	33.40	33.40	28.99	31.19
2010	22.37	0.00	0.00	0.00	0.00	0.00	35.61	35.61	33.40	35.61	26.85	28.99
2011	22.37	0.00	0.00	0.00	0.00	0.00	35.54	28.99	31.19	31.19	24.57	24.57
2012	22.37	0.00	0.00	0.00	0.00	0.00	28.99	31.19	33.40	28.99	30.28	22.37
2013	22.37	0.00	0.00	0.00	0.00	0.00	31.19	37.82	31.19	28.99	28.37	22.37
2014	15.75	0.00	0.00	0.00	0.00	0.00	NA	NA	NA	NA	NA	NA
Average	22.28	0.00	0.00	0.00	0.00	0.00	29.82	30.46	30.08	29.60	27.05	27.13
Max	28.99	0.00	0.00	0.00	0.00	0.00	42.23	37.82	35.61	35.61	32.27	35.61
Median	22.37	0.00	0.00	0.00	0.00	0.00	31.19	31.95	31.19	30.00	28.23	26.78
CFO Volume for four rights	17.30	NA	NA	NA	NA	NA	34.79	34.79	34.79	34.79	34.79	23.71

# APPENDIX 3

**Table A3-1: POU for other water right documents within the POU for CS4-01210CTCL**

Water Right Document No.	Document Type	Priority Date	Purpose of Use	CFS	GPM	AC-FT/YR	Acres Irrigated
S4-84607-J	CFO	April 1, 1869		NA	NA	NA	NA
S4-84621-J	CFO	June 30, 1871		NA	NA	NA	NA
S4-84624-J	CFO	June 30, 1873		NA	NA	NA	NA
S4-84606-J	CFO	June 30, 1878		NA	NA	NA	NA
S4-84363-J	CFO	June 30, 1880		NA	NA	NA	NA
S4-84620-J	CFO	June 30, 1885		NA	NA	NA	NA
S4-84586-J	CFO	June 30, 1893		NA	NA	NA	NA
S4-84587-J	CFO	March 22, 1894		NA	NA	NA	NA
S4-84608-J	CFO	June 30, 1902		NA	NA	NA	NA
S4-83696-J	CFO	May 10, 1905	Irrigation	NA	NA	NA	NA
S4-84641-J	CFO	May 10, 1905		NA	NA	NA	NA
S4-84639-J	CFO	May 10, 1905		NA	NA	NA	NA
S4-84610-J	CFO	May 10, 1905		NA	NA	NA	NA
S4-84588-J	CFO	May 10, 1905		NA	NA	NA	NA
S4-84589-J	CFO	May 10, 1905		NA	NA	NA	NA
S4-84649-J	CFO	May 10, 1905		NA	NA	NA	NA
S4-84643-J	CFO	May 10, 1905		NA	NA	NA	NA
S4-84645-J	CFO	May 10, 1905		NA	NA	NA	NA
S4-84642-J	CFO	May 10, 1905		NA	NA	NA	NA
S4-84640-J	CFO	May 10, 1905		NA	NA	NA	NA
S4-84638-J	CFO	May 10, 1905		NA	NA	NA	NA
S4-84650-J	CFO	May 10, 1905		NA	NA	NA	NA
S4-84648-J	CFO	May 10, 1905		NA	NA	NA	NA
S4-84644-J	CFO	May 10, 1905		NA	NA	NA	NA
S4-84647-J	CFO	May 10, 1905		NA	NA	NA	NA
S4-84646-J	CFO	May 10, 1905		NA	NA	NA	NA
G4-*00992SWRIS	Certificate	January 1, 1930	Irrigation	NA	2,000.00	1,190.00	1,050.00
G4-CV2P546	Certificate of Change	August 1, 1940	Irrigation	NA	1,500.00	893	700
G4-*00991SWRIS	Certificate	April 1, 1945	Irrigation	NA	500	80	20
G4-048253CL	Claim	April 1, 1945	Domestic Gen.	NA	200	15	NA
G4-00190-A(A)	Super. Cert.	June 8, 1948	Municipal	NA	NA	NA	NA
G4-00190-A(B)	Super. Permit	June 8, 1948	Municipal	NA	NA	NA	NA
S4-84609-J	CFO	January 29, 1951		NA	NA	NA	NA



Water Right Document No.	Document Type	Priority Date	Purpose of Use	CFS	GPM	AC-FT/YR	Acres Irrigated
S4-01141C(A)	Super. Cert.	January 29, 1951	Municipal	NA	NA	NA	NA
S4-01141P(B)	Super. Permit	January 29, 1951	Municipal	NA	NA	NA	NA
G4-072032CL	Claim	June 1, 1955	Domestic Gen., Irrigation	NA	12	0.75	1
G4-*04807CWRIS	Certificate	March 3, 1958	Irrigation	NA	1,200.00	960	700
G4-*04804CWRIS	Certificate	March 12, 1958	Irrigation	NA	240	34	8.6
G4-*04933CWRIS	Certificate	July 24, 1958	Municipal	NA	2,800.00	3,200.00	NA
G4-*04954CWRIS	Certificate	August 4, 1958	Municipal	NA	2,300.00	3,680.00	NA
G4-078579CL	Claim	January 1, 1960	Domestic Gen.	NA	5	1	NA
G4-*06025CWRIS	Certificate	August 16, 1961	Domestic Single, Irrigation	NA	50	14.5	2
G4-130527CL	Claim	April 1, 1965	Domestic Gen.	NA	10	2	NA
G4-091689CL	Claim	March 6, 1969	Domestic Gen.	NA	10	1	NA
G4-069838CL	Claim	March 11, 1974	Domestic Gen.	NA	NA	NA	NA
G4-156291CL	Claim	May 1, 1974	Irrigation	NA	10	2	NA
G4-087888CL	Claim	May 14, 1974	Domestic Gen.	NA	NA	NA	NA
G4-112818CL	Claim	June 7, 1974	Domestic Gen., Irrigation	NA	NA	NA	NA
G4-104141CL	Claim	June 17, 1974	Domestic Gen.	NA	NA	NA	NA
G4-124287CL	Claim	June 27, 1974	Domestic Gen., Irrigation	NA	NA	NA	NA
G4-156683CL	Claim	June 30, 1974	Domestic Gen., Irrigation	NA	NA	NA	NA
G4-156752CL	Claim	June 30, 1974	Domestic Gen., Irrigation	NA	NA	NA	NA
CG4-GWC939-D	Change App.	June 9, 1993	Irrigation	NA	500	80	20
CG4-GWC2922-A	Change App.	June 9, 1993	Irrigation	NA	82	10	2.5
CG4-GWC3105-A	Change App.	June 9, 1993	Irrigation	NA	1,200.00	960	700
CG4-GWC3210-A	Change App.	June 9, 1993	Irrigation	NA	240	34	8.6

Water Right Document No.	Document Type	Priority Date	Purpose of Use	CFS	GPM	AC-FT/YR	Acres Irrigated
CG4-CCVOL2P546	Change App.	June 9, 1993	Irrigation	NA	1,500.00	893	700
CG3-20651C	Change App.	June 9, 1993	Irrigation	NA	380	163.8	38
CG4-23041C	Change App.	June 9, 1993	Irrigation	NA	400	101	19.5
CG4-GWC940-D	Change App.	June 9, 1993	Municipal	NA	2,000.00	1,190.00	NA
CG4-GWC4646-A	Change App.	June 9, 1993	Municipal	NA	2,300.00	3,680.00	NA
CG4-GWC5318-A	Change App.	June 9, 1993	Municipal	NA	2,800.00	3,200.00	NA
CG4-GWC5511-A	Change App.	June 9, 1993	Municipal	NA	172	202	557
CG4-23039C	Change App.	June 9, 1993	Municipal	NA	200	83	NA
CG4-00190-A(B)	Change ROE	April 18, 2001	Municipal	NA	900	490	NA
CG4-00190-A(A)C	Change ROE	April 18, 2001	Municipal	NA	900	958	NA
R4-34552 T	New App.	April 12, 2002	Municipal	NA	NA	200,000.00	NA
CG4-GWC2851-A@2	Change ROE	May 24, 2005	Municipal	NA	5,000.00	8,000.00	NA
CS4-02084CTCL	Change App.	January 21, 2011	Irrigation	11.52	NA	1,746.00	104
CS4-01210CTCL	Change App.	January 21, 2011	Irrigation	9.38	NA	3,149.00	388.6
CS4-01213CTCL	Change App.	January 21, 2011	Irrigation	5.18	NA	1,764.00	91.2
CS4-01214CTCL	Change App.	January 21, 2011	Irrigation	9.33	NA	3,027.00	224.5

**Table A3-2: PODs within the POU for CS4-01210CTCL**

Water Right Document No.	Document Type	Priority Date	Purpose of Use	CFS	GPM	AC-FT/YR	Acres Irrigated
G3-+00676CWRIS	Certificate	April 28, 1971	Commercial and Industrial	NA	40	64	NA
G4-*06401CWRIS	Certificate	July 31, 1962	Commercial and Industrial	NA	285	280	NA



Water Right Document No.	Document Type	Priority Date	Purpose of Use	CFS	GPM	AC-FT/YR	Acres Irrigated
G4-*07270CWRIS	Certificate	July 22, 1964	Commercial and Industrial	NA	350	503	NA
G4-28514CWRIS	Certificate	July 10, 1984	Commercial and Industrial	NA	75	NA	NA
G4-28812CWRIS	Certificate	October 14, 1985	Commercial and Industrial	NA	75	NA	NA
G4-*04834CWRIS	Certificate	April 18, 1958	Commercial and Industrial, Domestic Multiple, Heat Exchange	NA	175	280	NA
G4-027487CL	Claim	January 1, 1933	Domestic General	NA	10	NA	NA
G4-052881CL	Claim	January 6, 1974	Domestic General	NA	NA	NA	NA
G4-130424CL	Claim	February 1, 1960	Domestic General	NA	15	4	NA
G4-138450CL	Claim	June 30, 1974	Domestic General	NA	NA	NA	NA
G4-033891CL	Claim	July 30, 1973	Domestic General	NA	NA	NA	NA
G4-020109CL	Claim	December 1, 1970	Domestic General	NA	5	1	NA
G4-116674CL	Claim	June 24, 1974	Domestic General, Irrigation	NA	NA	NA	NA
G4-23469CWRIS	Certificate	September 10, 1974	Dust Control, Irrigation	NA	400	210	40
G4-*07582CWRIS	Certificate	April 22, 1965	Heat Exchange	NA	150	NA	NA
G4-*10321CWRIS	Certificate	July 24, 1969	Heat Exchange	NA	50	7.2	NA
G4-*00143SWRIS	Certificate	August 1, 1923	Heat Exchange	NA	60	96	NA
G4-*00363SWRIS	Certificate	January 1, 1940	Irrigation	NA	50	10	2.5
G4-*07594CWRIS	Certificate	April 14, 1965	Irrigation	NA	50	7.2	1.8
G3-+21197CWRIS	Certificate	May 24, 1973	Irrigation	NA	30	12	3
S4-83684-J	CFO	June 30, 1900	Irrigation	NA	NA	NA	NA
G4-23040CWRIS	Certificate	June 3, 1974	Irrigation	NA	300	39	7.5
G4-28972	Permit	June 12, 1986	Irrigation	NA	100	12	3

Water Right Document No.	Document Type	Priority Date	Purpose of Use	CFS	GPM	AC-FT/YR	Acres Irrigated
CG4-GWC939-D	Change App.	June 9, 1993	Irrigation	NA	500	80	20
CG4-GWC2922-A	Change App.	June 9, 1993	Irrigation	NA	82	10	2.5
CG4-GWC3105-A	Change App.	June 9, 1993	Irrigation	NA	1,200.00	960	700
CG4-GWC3210-A	Change App.	June 9, 1993	Irrigation	NA	240	34	8.6
CG4-CCVOL2P546	Change App.	June 9, 1993	Irrigation	NA	1,500.00	893	700
CG4-23041C	Change App.	June 9, 1993	Irrigation	NA	400	101	19.5
G4-*04381CWRIS	Certificate	July 19, 1956	Irrigation	NA	82	10	2.5
G4-034188CL	Claim	August 1, 1973 September 10, 1874	Irrigation	NA	NA	NA	1
S4-83671-J	CFO	September 10, 1874	Irrigation, Stockwater	NA	NA	NA	NA
S4-83692-J	CFO	September 10, 1874	Irrigation, Stockwater	NA	NA	NA	NA
S4-83693-J	CFO	September 10, 1874	Irrigation, Stockwater	NA	NA	NA	NA
G4-*00526SWRIS	Certificate	January 1, 1936	Municipal	NA	220	103	NA
CG4-GWC431-A	Change ROE	January 24, 2001	Municipal	NA	500	534	NA
CG4-GWC518-D	Change ROE	January 24, 2001	Municipal	NA	220	103	NA
G4-*01112CWRIS	Certificate	April 30, 1949	Municipal	NA	500	534	NA
CG4-GWC2851-A@2	Change ROE	May 24, 2005	Municipal	NA	5,000.00	8,000.00	NA
G4-*05294CWRIS	Certificate	June 2, 1959	Municipal	NA	280	448	NA
CG4-GWC940-D	Change App.	June 9, 1993	Municipal	NA	2,000.00	1,190.00	NA
CG4-23039C	Change App.	June 9, 1993	Municipal	NA	200	83	NA
G4-32215 T	New App.	September 27, 1994	Municipal	NA	1,500.00	2,420.00	NA
G4-32214 T	New App.	September 27, 1994	Municipal	NA	1,500.00	2,420.00	NA
G4-*05076CWRIS	Certificate	November 25, 1958	Municipal	NA	1,385.00	2,216.00	NA
CG4-GWC3526-A	Change App.	January 24, 2001		NA	NA	NA	NA
CG4-GWC3526-A@1	Change App.	January 24, 2001		NA	NA	NA	NA
CG4-GWC3497-A	Change App.	January 24, 2001		NA	NA	NA	NA